4 of 1878-79

(Judicial) Legislation

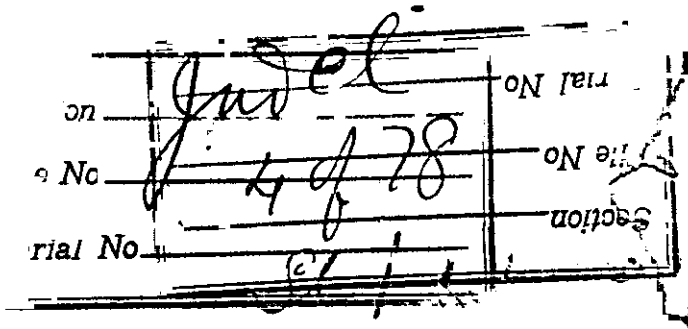
Section Judl
File No 4 of '78
Serial No 17

Incomplete.

Bill relating to Criminal Procedure.

Indexed
GR.

1879.



Enclosures No. 2

General No. 2041- 2042-

Jud No. 1334- 15-

0.1818

187.

From The Chief Commissioner
Mysore

To

Secretary to Chief Commissioner,
General Department.

Section VII
No 1443
Serial No 3

Dated 2 July 1879
Despatched 3
Received 2

Enclosures No. 1

General No. 1235
No. 144 187 —7.

Referring to his No. 2041-14
of the 29 ultimo forwarding a memorandum containing some remarks on the provisions of the Bill to consolidate and amend the Law relating to Criminal Procedure

Reply from Mr. Thornton Chief Ct due by 31st Inst. Send reminder then if necessary.

Asst Atkins
4.7.79

Received and put up below, Reply to Judn due by 1st Septr.

26.7.79

Put up a copy of the bill with these papers

20/7

No. 1235/144.

Bangalore 2nd July 1879

From,

J. D. Sandford Esqre
Judicial Commissioner
of Mysore

To

The General Secretary to the
Chief Commissioner
of Mysore

Sir,

In reply to your No. 2041/14 of the 29th ult., I have the honor to forward a memorandum, containing some remarks on the provisions of the Bill, to consolidate and amend the Law relating to Criminal Procedure.

I have the honor to be
Sir
Your most Obedt. Servant

J. D. Sandford
Judicial Commissioner

Memorandum containing Remarks of the Judicial Commissioner on the provisions of the Bill to consolidate and amend the law relating to Criminal Procedure.

Section 3 In some acts will be found the expression "Joint Magistrate" to be interpreted as "Magistrate of the 1st class" and I think also "Magistrate with special powers" meaning "Magistrate of the 2nd class". These expressions might be explained.

Section 4. clause f. I think Police Station might be defined so as to include an out lying Post, or outstation, otherwise prisoners arrested and complaints preferred at the outpost have to be dealt with at the Head Station to the great discomfort of the accused and

and complainant.

Under this clause any Native of India apparently whatever his descent or nationality, by undergoing the process of naturalization, may become entitled to the privileges of European British Subjects. Section 4, clause (w)

Perhaps the words "or declare the" might be added after the word 'define". It is convenient sometimes to appoint a subordinate Magistrate to exercise jurisdiction within a specified local jurisdiction. i.e. within certain Talugs or Pergunnahs, but such jurisdiction being well known is not "defined" but simply specified. Section 12.

Does this include High Courts other than those specified in the first paragraph Section 25,

paragraph of clause 5, section 4, part 1, chapter I?

Section 30

I think it would be useful to insert the words "or any specified class of offences" after the word "offences". There are obvious objections to the anomalous jurisdiction conferred upon District Magistrates by this section, but I imagine for political reasons it will be maintained. I am of opinion however that there should be some power of restraining the jurisdiction. And it is also convenient that there should be a power of leaving some part of the jurisdiction with its legitimate Court i.e. the Court of Session.

Section 43 clause 13

After the word "village" the words "or the passage

they are justified in so doing.

Section 58. The words "without warrant" in the first sentence of the section might perhaps be omitted. If the person be arrested under warrant and investigation proceeds, the provisions of this section should equally apply.

without warrant is ambiguous shd be without a warrant if arrested under a warrant he is bound to produce the prisoner but to keep him during investigation

Section 61 After "may" in the second sentence of the section the words "himself arrest or" might be inserted.

Section 62. After the word "time" in the first sentence of the section the words "himself arrest or" might perhaps be inserted.

Section 68 I think it should be provided that the mode in which summons has been served should be always without delay reported to the Court and

passage through such village" might be inserted. This would be useful to meet the cases of villages in mountain or hill passes, through which bands of dacoits habitually pass.

In this chapter I think some provision, should be made showing the circumstances, if any, under which a Police Officer, or other person seeking to arrest outlaws or criminals is justified in causing hurt or even death to the person resisting or escaping, as in the case of a dacoit armed, or a convict escaping from Jail. It is not an uncommon thing in Burma and elsewhere no doubt for the Police to fire upon such persons. And the question may easily arise, and to my knowledge has arisen as to how far they

Chapter V.

an words attempt to escape in part 2 of sec 46 Cr. P. Code

and that summons by affixing copy should be deemed to have been duly served only when the Court so orders, the Court being given a discretion of issuing a second summons or warrant if necessary under section 88.

I think it should be clearly laid down whether an Officer conducting a search under a search-warrant for a particular thing (section 94) may also take possession of other property suspected to be stolen. It is a common practice for the Police to do so but its legality may be questioned. The practice is defended on the authority of section 413 of the present Code, but I think it should be laid down

down under what if any circumstances other than under a general warrant (Section 97) the Police may take possession of property. Much injustice and oppression may be caused by indiscriminate seizure.

Section 104. I do not understand the use of this Section which is apparently only a repetition of the 96th Section in the Penal Code that nothing is an offence which is done in the exercise of the right of private defence.

Section 121 The grounds of such refusal should be placed on record and an appeal allowed. The authority at present vested in Magistrates in regard to security is in my opinion too wide.

Section 122 I would give a period of

of 24 hours within which security may be given before the man is sent to prison.

It is not clear to me what course the law intends the Policeman to pursue in cases to which the proviso applies. Is he to do nothing and leave the complainant to go to the Magistrate or is the attention of the proviso merely to dispense with the investigation on the spot, and is the Police officer still at liberty to investigate by sending for the witnesses, under Section 158 and arresting and sending in the accused to the Magistrate, if he considers the case proved under Section 68? It seems somewhat unreasonable that in a case of petty theft for

for he would be in the meanwhile?

Section 155, first proviso,

under (a) or (b) he may conduct investigation without visiting the spot

under (c) he may decline to investigate at all.

for instance when the accused is well known the Police officer should do nothing but let the accused run away. I think the proviso altogether rather an unfortunate one. The words "not of a serious nature" are very vague.

Section 161 This Section is constantly and systematically disregarded by the Police probably in almost every case investigated by them. A Police Officer offending might be held guilty of the offence made punishable by Section 166, Indian Penal Code, could a proviso to that effect be inserted?

Section 163. It should be laid down what the powers of the Police are if suspicious property is found beyond the particular thing

thing searched for.

I would add "or" Section 172, clause c
if any person has died
in the custody of the
Police". It is I think very
important that the closest
and most independent
investigation should take
place in such cases.

I would insert "when Section 174
the death of any person has
occurred while in the
custody of the Police or
where otherwise necessary
"shall" for "where necessary".

May a person Section 178
who has stolen goods in
Foreign Territory and
who is found in possession
of them in British Terri-
tory be tried and punished
for the offence of retaining
stolen property in our
Courts? I should say
he could. There have
been various decisions
of High Courts. Perhaps
the

the matter might be settled:.

Sec: 4 Bom: LR: cases 38

I. L. R. 1 Bom: 50

1 Madras 171

Section 187 (clause d) clauses (g) and (h) I suppose are meant.

h!?!

Robbery and Dacoity are offences against property.

Section 188. I think the policy of these Sections very questionable. Thus a person causing miscarriage (Section 312) or death of an unborn infant (Section 316) or exposing a child with a view to abandonment (Section 317) or concealment of birth (Section 318) is safe from prosecution if he can conceal his crime for 6 months. Again the offence of administering poisonous drugs (Section 328) is one very dangerous to Society. I do not see why a man who

who can manage to con-
ceal his crime for a short
time should be unpunished.
It appears to me that the
result of these sections will
be to increase certain
kinds of crime and to
make criminals more
cunning. Should not a
policeman who tortures
in order to obtain a con-
fession or a person who
burns another to make
him discover where stolen
property is hid (Sections 330
331 (a not uncommon offence)
be punished if he can
smother the complaint
for six months?

In this section para Section 190
1 I would also exclude
the time during which
a person has evaded the
service of process or arrest.
And the date of summons
warrant or proclamation
should be fixed as the date

from

from which his impr. proced absence will be reckoned.

Section 191 Qu: a prosecution once commenced by issue of process to be considered in force for ever, although the accus. may abscond? If so I do not see the advantage of the provision as to the exclusion from the period of limitation of the time during which the accused fails to surrender.

Section 192, clause c paragraph 2. I would make it clear here that any Magistrate can take cognizance of an offence committed in his presence, within his jurisdiction, without complaint. Section 61 gives the power of arrest in regard to such offences but the arrest is needless unless the Magistrate can proceed to

provisions of Section 218
and that he should
forthwith Report to the
Magistrate the mode
in which service is
effected. Witnesses for
the defence constantly
do not appear before
the court of Sessions and
the accused being in
Jail cannot himself
see to their attendance.

Section 219 I would add the
words "and of any docu-
"ments which have been
"admitted in evidence
"against him and placed
"on the Record" after the
word "depositions" in
the first sentence.

Section 220 para 2. When the court
of Sessions is a court of
circuit it seems incon-
-nient that the weapons
and other moveable
things should be sent
to it, until its arrival
at the place where the

to deal with the offender.

I would add the words "or authorized agent" after the words "his pleader" at the end of the 1st paragraph of the Section. — Section 206

I would add "or translation in his own language or in a language which he understands" after the word "thereof". — Section 211 para: 2

I suppose it is intended that the magistrate after examination of the witnesses for defence, if he thinks fit to examine them, should have power to discharge the accused or even deal with him himself. This should be expressly stated. — Section 214

I think that the officer serving the summons on the witnesses for defence should have power to bind them over to attend the Court of Session under the provisions — Section 217 para: 2

Magistrates Court is held and where the depositions trial will take place. In the meantime such weapon or articles might remain in the custody of the committing Court.

After the word "shall" I would insert the words "at the time of framing it" but this matter seems provided for by Section 211. Section 223 para 6

"The fact of the previous conviction he states in the charge". I am inclined to doubt the propriety of this. The Jury or Assessors are I think prejudiced against the accused, when they hear that there have been previous convictions against him. It would be better I think if the previous convictions were Section 223 para 7

not

not inserted in the charge, and were not proved until after the verdict of Jury or opinion of assessors has been taken.

Section 227. I would insert the words "or in appeal or Revision" after the word "case"

Section 229 para 2. It is often necessary not only to alter but to add charges. I think the power to add charges should be clearly given. If so the following sections must be worded so as to provide for an addition as well as an alteration. Sections 231, 232, 233.

Section 235 para 1 Suppose which is not an imaginary case the appellate court or Court of Revision is of opinion that the convicted person was misled by an error in the charge but is also of opinion that

Section 238. illustration f.

I think this case comes under para I: two distinct offences are committed, the mischief ends before the theft commences. A could be punished for both offences.

Section 239.

I would insert the following words at the end of the section "but he must not receive punishment more "severe than could be "inflicted for one of these "offences."

Section 241

I think this section might also provide for conviction of a minor offence (for instance culpable homicide not amounting to murder) when a person is charged with the major offence but establishes certain circumstances which reduce it.

It does so provide surely?

Section 250.

I think in these

summons

summons cases which are often very petty and involve very little if any criminality on the part of the accused, the Magistrate might be empowered to allow the accused to put in an appearance by Pleader though not summoned to do so under Section 206 and might also allow one accused to appear by his fellow-accused, a power to compel personal attendance being reserved.

I should almost be inclined to omit this general clause and specify any offences that it may be thought desirable to try summarily. The general clause includes many offences, such as for instance, Rash navigation of a vessel (Section 280 I.P. Code) the investigation of which may

Section 263(a)

The clause leaves the procedure as it was by allowing trial of all offences normally tried in summons cases summarily - ~~they should~~

may give rise to many difficult questions of law and fact which should not be disposed of summarily.

Section 272 para 1

Might "or of any particular class of persons" be inserted after the word "offences"? If Europeans or Americans cannot claim a jury before the court of Session as of right, I think the Local Government might have the power of ordering such trials to be by jury.

Query to Section 276

I would not extend this provision to Sessions Judges without giving the Public Prosecutor an opportunity of being heard in support of the charge.

Section 278

No sec 460 in the reverse -

This provision is repeated in Section 460.

Section 289 para 1

I would not instruct the Public Prosecutor as to the

the manner of opening
his case.

It is quite sufficient Section 290
to say that the examina-
tion of the accused shall
be taken as evidence. The
words "scrutinized by the
Judge" are open to objection
as implying that the
Judge will not do his
duty.

It might be as well Section 291
to provide that a convic-
tion shall not be based
upon such evidence alone.

I do not think that Section 292, paras 2 and 3
the words "wholly discredits
the evidence for the prose-
cution" at all an improve-
ment upon the ~~framed~~ present "if
the court thinks there are
no grounds of proceeding".

The matter of crediting
the witnesses is for the
Jury or Assessors. It is
when the evidence of be-
lieved establishes no case
against the accused that

that the Judge should at once record a finding or direct a verdict of not guilty. I think the alternation in the words of the law in both the latter paragraphs of this section should be reconsidered.

Section 293. I do not think these (and whether he thinks the evidence for the prosecution insufficient or inapplicable) detailed instructions for counsel necessary.

Section 302 (b) After the word "terms" perhaps the following might be inserted "other than legal".

Section 311 The following words "without return of a verdict" might be inserted after the word "discharged".

Section 312 I think the grounds of the opinion, if the

Assessor gives any should be recorded. They would be useful to the Appellate Court.

It should be also provided that persons incapable of serving for the reasons given in Section 281, should not be included in the list.

Section 326

Query "Magistrate" or "District Magistrate"

Section 328 para 1

After the words "High Court" it would be useful to insert "or any offence which should in the opinion of the Magistrate be tried by the Court of Session"

Section 339 para 1

suggests alteration in present law

The words "against him" might be omitted. They should be evidence for him as well as against him.

Section 344 para 3

we do not to make them evidence for as they are for the defence only against him

This Section appears to me much too large. Surely offences under Sections

Section 347

312 - 318, causing miscarriage,
injuries to unborn children,
exposure of infants and con-
cealment of births should
not be compounded.

Nor do I think should
it be possible to compound
voluntarily causing grievous
bodily harm Section 323, and cer-
tainly not causing hurt
to extort a confession nor
to deter a public servant
from duty Sections 330 - 333
nor wrongful confinement
for the purpose of constrain-
ing to illegal act Section 347
nor for the purpose of ex-
torting confession Section 348.
And again the offence of
administering poisonous
drugs Section 328 is much
too dangerous to society
to admit of being compounded.

Under the Section as it
at present stands, Rape
and unnatural offences
can be compounded. This
must

must be an oversight.

Neither theft Sections 379-382 nor extortion Sections 384-389 nor cheating Sections 417-420, should be capable of being compounded. Regard must be had to the interests of Society not the individual sufferer. The result of the Section as it stands would be to increase immensely many kinds of crime, the offender hoping to make it right with the person injured if found out.

Some kinds of mischief - e.g. poisoning cattle (Sections 428 and 429) and such mischiefs as affect the public should not admit of being compounded and certainly not arson or mischief by fire (Sections 435-436).

Nor should house trespass in order to commit theft nor house breaking be

be compounded. Sections 449-462.

I do not think offences against trade marks Sections 482-489 should admit of being compounded. The offence is against the public as much as the individual.

Section 359 I would give a discretion to a Magistrate or Judge recording evidence under Section 359 to cause any particular portion of evidence to be recorded in the language in which it is given. This would be needful when a witness is to be tried for giving false evidence.

Section 366 paral. The record of the prisoners answers should be in the language in which they are given, unless there is no person available

available who can write the prisoners language. (This sometimes occurs in Burmah, where the prisoners come from border states.

It often occurs in Mysore where few can write Hindustani or it will be useless if written for few can read it

After the words "Court" at the end of the first sentence, I would insert the words "or by a Magistrate recording a confession under Section 162."

Section 366, para 4,

See I. L. R. 2. Mad. 5 Empress of Ramanjayya.

I am inclined to think that in all cases the evidence should be given in the presence of the accused. If it is necessary to have the evidence at all it is better to have it subject to all the checks which are necessary to ensure its truth so far as that may be possible.

Section 377

Section 382, para 2. I would not allow this dispensation.

Section 383. The execution of sentence of death should not take place until the expiry of the period allowed for appeal.

Section 384 I would omit the words "by the civil Surgeon", as there may be none.

Section 387. Some provision should be made for the issue of warrants for execution of sentence, whether of release or altered sentence of appellate or revising Court. There is a good deal of difference of practice in this respect; and if, as is considered by some authorities, the proper course, in the absence of any provision, is for the Court below to recall its warrant and issue a new warrant, a great deal of delay takes place in giving

effect to a sentence of release. The prisoner may have been and often is taken to the jail where the appellate or revising court sits, many days journey from the court which passed the sentence.

This Section is not very intelligible. Section 391

I think there should be some provision authorizing the detention of a person sentenced to whipping for such time (not exceeding 12 hours) as may be necessary for execution of sentence. Section 392

Suppose an accused is sentenced by a magistrate at 6 o'Clock in the evening, it is probably before he reaches the jail and it seems unreasonable that an officer in charge of a jail should be present

at

the Local Government
to call for the record in
such cases.

The Section (204) should be specified — Section 404 (explanation)

I would give an appeal from an order of a District Magistrate, requiring security, to the Court of Session. — Section 405

I think a Sub-Divisional Magistrate of the 1st Class should be empowered to hear appeals without reference by District Magistrate. It seems hard to force persons unjustly sentenced to proceed to a distant Court merely for the purpose of filing an appeal, and if the appellant is in prison the sentence will very probably be over before the appeal is heard. Appeals from Sub Magistrates are not too readily preferred — Section 406

and

at all times to carry out such sentences.

Section 398 para 1. After the word "immediately" the following might be added "subject to the provisions of Section 383 in regard to execution of sentence. He should not be hanged until expiry of period allowed for appeal.

Section 399. (proviso) Is the man to come back to be imprisoned after suffering the transportation? Could not the Court have the power of amalgamating the imprisonment and transportation into one sentence of transportation, so that the former sentence of imprisonment shall merge in the transportation?

Section 402 para 2. I would also give power to the Governor General in Council or to

and no obstacle should be placed in their way.

Section 407 (1st proviso).

Not only "been submitted to" but "passed under the review of" "or" where such sentence has been confirmed or modified."

Section 410

I would substitute for the words "where the case has been submitted by" the words "where the sentence has been confirmed or modified."

Section 412

Suppose, which is by no means improbable, a man is convicted on a plea which is not properly a plea of guilty, as where he adds some explanation to his plea, or suppose that there is reason to think that the charge has not been properly explained to the accused, should there not be an appeal on these grounds?

I would add to this section 417
Section a provision that
in the absence of such
appeal an order of ac-
-quittal if passed by a
Court of competent juris-
diction shall be final.
Some doubt has been en-
-tertained as to whether
a High Court can alter
a sentence of acquittal as
a Court of Revision I
would not allow such
alteration.

I think that some Section 418
provision should be made
as to how far an appeal
should lie from a convic-
tion on a trial by jury
on the ground of mis-
-direction. I would not
allow such appeal when
the alleged misdirection
consists simply of an
omission on the part of
the Judge to call attention
to certain facts.

Section 423 para 1

The necessity of giving this notice to the appellant causes undesirable delay in the case of a capital sentence. The appeal itself need not be presented till the 7th day from sentence, and if the Jail is at a great distance from the Appellate Court an interval of 3 weeks may perhaps necessarily take place before appeal can be heard.

A person sentenced to death should be given to understand, that he should not only present his appeal but that he must support his petition if he wishes to employ counsel within 7 days and then no additional notice would be necessary under Section 423

Section 424.

The record is before the Court in capital cases.

For "discharged" I would read "acquitted". Section 424 (c)

I very much doubt whether this power of enhancement should be continued. At any rate I would limit it to the High Court. It must be remembered that the appellant has seldom the power to appeal, and the enhancement takes place behind his back. I have known a man sentenced to death on an appeal without being heard. I would prefer to strike out the power, or I would only allow it on the application of the Local Government and I would certainly provide that before such enhancement, the Appellate Court, shall have power to order the attendance of the accused, and that

no

no such enhancement should take place without hearing the accused or his Pleader.

It would be sometimes useful if the Appellate Court could order the production before itself of the accused Appellant when in Jail.

Section 431 — I do not think this is a just provision. The family of a man should be allowed to clear his reputation from a conviction they consider to be unjust. I would allow an appeal to be presented or supported by the representatives of a deceased person.

Section 434 — I would not confine this provision to chartered courts. It is a very useful provision for any High Court with 2 or more Judges. And I would even give

give this power of reserving
a point of law for considera-
tion or argument to a High
Court consisting of a ~~Single~~ single
Judge when exercising the
jurisdiction of a court of
Session. e.g hearing an
original Criminal case
called up under section
436. It is not easy to decide a
difficult point of law, without
more consideration than
a Judge can conveniently
give, while Appeons or Jury
and witnesses are waiting.

I would make it clear Section 435
clear that the powers of
Revision of the High Court
do not extend to questions
of fact and would provide
that the mere question of
sufficiency or credibility of
evidence is not a proper
ground for calling for
proceedings or for exercising
powers vested in High
Courts by Section 439.

Otherwise

otherwise the High Court may become a court of second Appeal in every sentence passed in the Province and a court of first appeal in cases not appealable.

I would omit the 2nd para of the Section.

Section 439

I would not extend this power of Revision to orders of acquittal. The power given to Local Government by Section 417 is encroachment enough upon the maxim "nemo debit bis vexari" without giving to the Court a power to alter a sentence of acquittal on its own motion, and <u>without any period of limitation</u> and without necessarily hearing the accused.

Section 440

I would specially provide that no sentence shall be enhanced without hearing

hearing the accused or
his Counsel or giving him
an opportunity to be heard.

I would add to this Section 441
Section "and shall have the
power of calling for such
a statement when it is not
submitted"

The words "offence Section 447, para 2.
complained of" are not
very suitable I think. It
is not so much the offence
complained of as the offence
which appears to be established
by the evidence which should
guide the Magistrate in
determining whether the
commitment should be
to the Court of Session
or to the High Court.

I would say "If on Section 449, para 2.
receipt of the proceedings
of the committing Magis-
trate, or at any stage of"

I am inclined to think Section 451
that an European British
Subject or an European or
American

American should be allowed to claim a jury both in the Court of Sessions and in the High Court. By Section 234 of the present code Europeans (not European British subjects) can claim a jury

Section 463 There is one point not dealt with viz, suppose a person does not claim his privilege before the Magistrate, may he claim to appeal as an European British subject to the High Court? and object to jurisdiction of Sessions Judge (not being an European British subject) to try his appeal?

Section 461 After the word "Jury" the words or "Assessors" should be inserted ~~I suppose~~

Section 462 This section should also provide for the summoning of European or American Assessors.

It is a very common practice to send a prisoner under this section for observation to a Medical Officer and he is sometimes so detained for weeks or (I think I have known) even months. The Section does not I think authorize such detention, and if it is considered necessary the Section should legalize detention for an expressly limited period for purposes of observation.

Section 464.

I would omit this power of enhancement for which there appears no occasion.

Section 486 para 2

This power vested in the Magistrate, which appears to be new, of ordering payment of maintenance to any person whom he directs may lead to complications. Suppose the Magistrate to

Section 488, para 1.

American should be allowed to claim a jury both in the Court of Sessions and in the High Court. By Section 234 of the present code Europeans (not European British subjects) can claim a jury.

Section 453 There is one point not dealt with viz, suppose a person does not claim his privilege before the Magistrate, may he claim to appeal as an European British subject to the High Court? and object to jurisdiction of Sessions Judge (not being an European British subject) to try his appeal?

Section 461 After the word "jury" the words or "Assessors" should be inserted I suppose.

Section 462 This section should also provide for the summoning of European or American Assessors.

to order payment to a Master of a school (which I have known to be the case) and the mother or person entitled to guardianship of the child refuses to part with it, the Magistrates order will be abortive. Perhaps the Section might run "to pay the same to the "person having right to "the guardianship of the "child or in case of doubt "as to such right or in case such person is unwilling to receive the child, to such person as the "Magistrate from time to time directs."

Section 522— I would add the following.

"But this Extract "or certificate shall not dis- "pense with the necessity of "proving the identity of the "accused with the person "named therein"

I have known a court take advantage of Section 327 of the present Code to read in evidence depositions taken on the trial of other accused persons at a time when the person being tried had absconded. However I think the words "if it be proved that the accused person has absconded" ... ~~you~~ will prevent this for the future

Section 523

I dont think I would allow this where sureties are required.

Section 524

After "it may order" I would insert "after issuing notice to the parties interested, other than the party making the application."

Section 536 (d)

Perhaps a clause might be added enabling transfer also when the file of any Court is so heavy as to cause delay in the disposal of cases.

This provises often makes the order quite exhortive. The person compensated lives perhaps at a great distance from the Court and does not know when to appear. I would prefer to strike this paragraph out and give power to recover amount from compensated person if the order be reversed on appeal. Section 554 para 2.

This provision appears to be quite out of place in a Code of Criminal Procedure. The Civil Court would take such amount into consideration without the provision probably. Section 556

This is a Section which might be extended to other besides Section 561

Presidency

Sometimes it is convenient to order transfer of a case committed to a Court of Session to a Magistrate empowered under Section 30; but this section does not allow such transfer as the Magistrate's Court is of inferior jurisdiction to Sessions Court.

For the words from "shall" to "Advocate General" in para 3 of the Section, I would substitute "shall be made by application in Court, which shall except when the applicant is the Advocate General or Public Prosecutor"

Very often an application for transfer is made by a Session Judge or Magistrate who from being interested in the case does not wish and is not the proper person to try it. May not he apply to the Court by letter?

Presidency Magistrates

Bradford

&c &c Judicial Commissioner

9
A-46

1879. 0.2158.

From The Hon'ble Mr. Justice Kennedy, Officiating

To

Secretary to Chief Commissioner,
General Department.

Section Judl
File No 4878
Serial No 3

Dated 24th July 1879.
Despatched
Received 24 — —

ENCLOSURES NO. 1

General No. 467 } 187 —7.
No. 393

Sir,

In reply to your No. 2042 dated 29th ult., I have the honor to submit herewith a Memorandum containing my observations on some of the provisions of the Bill to Consolidate and amend the law relating to Criminal Procedure —

I have the honor to be,
Sir,
Your Most Obedt Servt

H. Kennedy
Officiating
Judl Commr

Memorandum.

On the Bill to consolidate and amend the law relating to Criminal Procedure.

Section 43. Clause (d) -

This section requires every owner or occupier of land to communicate forthwith to the nearest Magistrate or to the officer in charge of the nearest Police Station any information which he may obtain respecting the occurrence in or near his Village of any sudden or unnatural death.

I think it is too much to require of every owner or occupier of a land in a Village to do this. Although he may not credit the information he receives yet he will be bound

It is not new & it works well & [illegible] Even if it is new it is not necessarily bad. Many new things are required!

by this clause to convey the information to the Magistrate or Police. I think the obligation imposed by this clause should be limited to those cases in which the owner or occupier of the land has personally witnessed the sudden or unnatural death or, in case he was simply informed of such occurrence, he has had reason to believe or suspect that such occurrence had actually taken place.

Under this section the moveable or immoveable property of a person, who has absconded to evade the execution of the warrant issued for his arrest, may be attached. Section 86.

With regard to the moveables, it is not clear whether a debt, share in the capital of any Companies

Section refers to property belonging to the person in possession

Company or Corporation, or other moveable property not in the possession of the person who has absconded may be attached if the Magistrate has reason to believe that the debt or share is due to the person who has absconded, and that he has also an interest in, or right to the moveable property though not in his actual custody or possession. This point may be made clear. Clause 3(C) of this section allows the attachment of rent due to the absent person. In the same manner a debt due to the said absent person may also be attached and a Receiver appointed to collect the same. In the case of moveables not in the possession of the absent person.

person the attachment may be made, as in Civil Cases, by a written order prohibiting the person in possession of the property from giving over the same to the absent man -

Lawful resistance to the Section 104. Commission of an offence may, it is laid down in this section, be made by any person in the cases and to the extent in and to which he may exercise the right of private defence - Sections 96 to 106 of the Indian Penal Code 1861 sufficiently provide for cases of the kind contemplated by section 104 of the proposed bill, and I don't see what necessity there is for repeating the provisions in a Code of Criminal Procedure. If it is considered the sections

of -

of the Indian Penal Code referred to above do not clearly provide for the point in question, I think the proper course is to supply the omission in the Penal Code itself by passing an amendment Act in this respect.

Section 248. It is stated in this section that the withdrawal of a charge shall have the effect of an acquittal, but it is not clear, when conviction has been obtained on one of several charges & the Court of its own accord suspends the inquiry into, or trial of the remaining charges, such suspension will have the effect of an acquittal

In case the Court suspend it will that it will not — The last sentence will in some cases withdrawal or suspension. [illegible]

acquittal.

The object of the new provision section 250.
made in this section is not
quite clear. The Magistrate
should, I think, be required
to dispose of finally all cases
instituted before him, otherwise
the parties concerned will be
kept in anxious suspense
and dread, and if an ignorant
not happen to be the accused
and does not understand the
proceedings of the Magistrate
undue advantage may be
taken of the same, tending
to mischief, fraud and
corruption.

After the Assessors opinion section 312
has been recorded the Court
has

has to give its Judgement. Supposing the Court takes time to consider its Judgement and adjourns to another date for the purpose, I presume, it is not necessary for the Assessors to attend on the day fixed for Judgment - I do not think it is necessary that the Judgment should be delivered in the presence of the Assessors -

Section 362. The practice in almost all the Courts in Mysore is, that as the examination of each witness is concluded and the evidence is read over to witness, a memo or certificate is appended at the foot of the deposition to the following effect

effect and signed by the Magis-
trate or Judge.

" Read over to witness in
Canarese (or other language)
which he understood and
acknowledged to be correct."

In a recent case finding
that the above certificate or
memo was not affixed, I re-
ferred the case to the Judicial
Commissioner who held that
the present law did not require
that a certificate should be
affixed to depositions of
witnesses examined in
Criminal cases. Now that
the amendment of Criminal
Procedure Code is under con-
sideration, I think a proviso
may be added to Section 362,
that

This procedure
is required by
[illegible]
[illegible]
practice. There
is [illegible]
have [illegible]
the change into
amend 72
in law requires
the evidence of
read out & it is
to be summed
[illegible]
Comm. to the
Law without
Certificate in
each case the
they have done
so

that when a Magistrate takes the deposition with his own hand and the deponent is not required to affix his signature to it in acknowledgement of its correctness, a certificate to the effect mentioned above may be required to be affixed to each deposition and signed by the Judge or Magistrate -

Sections 377, 382 & 423.

The additional evidence taken under this section should, I think, be taken in the presence of the convicted person or his pleader, so as to admit of the additional witnesses examined being cross examined on behalf of the Convicted person.

The

The Local Government may, section 417
under this section, direct the
Public Prosecutor to present an
appeal to the High Court from
an original or Appellate order
of acquittal, dismissal or
discharge. But supposing the
order of acquittal ~~the~~ was passed
by the High Court, can the
appeal be presented to the
same Court? The High Court
is defined to be the highest
Court of criminal appeal or
revision for any local area -
for instance, in the Court of
the Judicial Commissioner
which is presided over by one
Judge, if the order of acquittal
was passed by him, can an
appeal

appeal be preceded to the same Judge under this section? Such appeal will be more in the nature of a review.

Sections 407 & 444.

Under section 407 a European British subject convicted by a Magistrate for any offence may, at his option, appeal either to the High Court or the Court of Sessions. Suppose the presiding Judge of the Sessions Court is not a European British subject, can he hear and determine the appeal?

In section 444, it is laid down that no charge against a European British subject shall be tried by any Sessions Court, unless the presiding

Presiding Judge is a European British subject. This section applies only to original trials I think, as the words "trial" as defined by Act X of 1872 section 4, "means the proceedings taken in Court after a charge has been drawn up and includes the punishment of the Offender". A similar definition may be added to the new Bill.

In any case in which Section 494.
the Government is specially interested and the prosecution has been instituted under the special sanction of Government, I think the Public Prosecutor should communicate with the Government and obtain

The Court has no authority to go beyond his instructions

obtain their instructions before moving the Court for permission to withdraw.

Extradition. In conclusion, I think the provisions of the Extradition Act XI of 1872 may be embodied in the proposed Bill.

P. Thumboo Chetty
Asstt. Assistant Judge
Tuticorin 8th Oct.

To be placed in File.

O. or M.

No. 846

Date 19-8-79

From Legislature

or

To July 1-11-81

Session. 1st A 45
No. 4478
Serial No. 4

1879 02641

From
The Supt. Govt
Printing

The Chief Commissioner
of Dayton

Dated 28th August 1879 -

No. 700 P

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...aw relating to
...inal Procedure,
...ttorneys, and ...

...letter from Leg. Asst
... Headqrs. respecting
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...epary, but that Authority
...the Legislature

Referred to
letter from the
Registration Depart
dated 29th

No. 700 C

Office of the Superintendent of Government Printing,

No. 8, Hastings Street.

FROM

THE SUPRINTENDENT OF GOVERNMENT PRINTING,

TO The Chief Commissioner of Mysore

Calcutta, 23 August 1879.

Sir

With reference to the commu-
-nication addressed to you by the L-
-lative Department of the Gover
of India in regard to the Bill
consolidate and amend the law rel
-ting to Criminal Procedure, I have
the honor to request the favor of
being early informed if any copies of
the Bill in Gazette form are require
for issue with your Gazette.

I have the honor to
Sir
Your most obdt. serv

Supdt. Govt. of India Prns

8th No. 4505
8th 887

Umpore Chief Commissioner's Office,
Dated, Camp Umpore, 6th September 87.

From

Section
File No
Serial No

The Secretary to the
Chief Commissioner
of Umpore.

To,

The Superintendent
Government Printing
Calcutta.

With reference to letter No. 846 dated 9th August 87
from the Secretary to the Govt of India Legl Dept a
Sir, I am directed by
Chief Commissioner to inform you that copies of the Bill
to consolidate
and amend the law relating to
Criminal Procedure, are not required at present in gazette form
but when the Bill is passed
by the Indian Legislature, application will be made
to you to furnish this
Administration with 900 copies of
the Act for distribution in the Province

I have the honorable,
Sir
Your obedient Servant

I
A- 46

1879

The Superintendent
of Govt Printing.
Calcutta

Dated Camp Mypore, 5th September
Rec'd
Despatched
Received.

Enc: No —

Genl No 4505
Sl No 887

States that Copies
Bill relating to Crim
Procedure are not requ
in Gazette form, but that applicat
will be made for 900 copies
of the Act when passed by the
Indian Legislature.